



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

rec'd 6-14-84



JUN 11 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Issuance of Administrative Order in U.S. v. Reilly Tar

FROM: Kirk F. Sniff
Associate Enforcement Counsel for Waste

TO: Robert Schaefer
Regional Counsel, Region V

Thank you for your memorandum of June 4, 1984, in which you expressed your reservations regarding the issuance of Section 106 administrative orders in filed cases generally and specifically in the Reilly Tar case.

It has been our policy to issue administrative orders in filed cases in appropriate circumstances. This policy was reached after consulting with the Department of Justice and following requests for approval of such a policy by several Regions. Prior to making this policy determination, the Assistant Administrator was fully apprised of the issues involved, including those raised in your memorandum. Administrative orders have been issued in the Price and Western Processing cases and considered but rejected in Petro Processors when settlement was reached.

Your memorandum apparently concludes that if the Assistant Administrator makes such a policy determination, deference should be given to the litigation team as to the appropriateness of issuing an administrative order in a particular case. We agree with this conclusion. Because it is frequently difficult for managers who are removed from the actual prosecution of a case to adequately assess the advantages or disadvantages of a particular litigation strategy, including the views of the presiding judge, we must rely in a large measure on the litigation team. Of course, if administrative orders are issued as part of the litigation strategy, the Agency must be prepared to support the strategy with adequate resources.

With respect to the issuance of an order in the Reilly Tar case, it is my understanding that the litigation team considered each of the points raised in your memorandum -- impact on the judge, appropriateness of an injunction, likelihood of challenge -- and concluded that an administrative order was appropriate. I am advised that the team believes an administrative order will prod the negotiations which are at an impasse by putting pressure on Reilly to either comply with the order or settle the case. This resolution was concurred in by the Regional, Headquarters and DOJ staff attorneys and the Regional Program Office. It is strongly recommended by Lee Thomas and the State of Minnesota.

Accordingly, I do not believe it is necessary for the litigation team to prepare a thorough briefing paper on the issues involved in issuing an administrative order in this case. I believe a reasoned determination was made prior to reaching this decision. I understand that the Record of Decision was signed by Lee Thomas on June 7, 1984, and therefore expect that the Region will quickly issue an administrative order in the Reilly case.

Again, thank you for your thoughtful comments. I agree that the type of assessment set forth in your memorandum should be made by the litigation team prior to the issuance of administrative orders in filed cases.

cc: Richard Mays, Senior Enforcement Counsel, OECM
Gene Lucero, Director, Office of Waste Programs Enforcement
Stephen Ramsey, Chief, Environmental Enforcement Section,
Department of Justice